

REMARKS

The Examiner acknowledged applicants's election of Group I, drawn to a plurality of polynucleotides, with traverse in the response filed 11/3/03. The Examiner stated, however, that after further consideration and in accordance with the guidelines for restriction of nucleotide sequences as set forth in the MPEP 803.04, since the elected claims are directed to compositions reciting different combinations of individual nucleotide sequences, applicants are required to elect one single combination for examination including specific sequences. Applicants are requested to provide the Office the sequences believed to be novel for the initial searches.

The Examiner stated that applicant arguments that claims in groups II-IV should be examined together with group I have been considered but are not found persuasive. Thus, the restriction requirement mailed 10/3/03 is deemed proper and thus made FINAL.

Applicants are advised that should claims of group I be found allowable, the method claims of using the composition of group I would be rejoined.

Applicant is advised that the response to this requirement to be complete must include an election of a single combination with specific sequences of polynucleotides to be examined even though the requirement be traversed.

Applicants Response

In response to the restriction requirement, applicants elect the combination of SEQ ID NOs:1-25 as recited in claim 1 of group I, with traverse, and further select the sequences of SEQ ID NOs:1, 11-18 and 25 to be examined with respect to this combination, again with traverse.

Applicants reiterate their arguments presented in response to the previous restriction requirement filed 11/3/03, that proper restriction in the instant case is set forth in the paragraph of MPEP 803.04 that recites:

In applications containing all three claims set forth in examples (A)-(C), **the Office will require restriction of the application to ten sequences for initial examination purposes.** Based upon the finding of allowable sequences, claims limited to the allowable sequences as in example (A), all combinations, such as in examples (B) and (C), containing the allowable sequences and any patentably indistinct sequences will be rejoined and allowed.

Rejoinder will be permitted for claims requiring any allowable sequence(s). Any claims which have been restricted and nonselected and which are limited to the allowable sequence(s) will be rejoined and examined. (Emphasis added)

Thus, in a case such as the instant application where both combinations of polynucleotides, as in claims 1-6 of Group I, and individual sequences recited in the alternative, as in claims 12-14 of group IV, are presented proper restriction permits the applicant to select ten sequences for initial examination purposes relative to the examination of the claims of both groups I and IV.

The Examiner is further reminded that while the initial examination may be restricted to the single elected combination of SEQ ID NOs:1-25, MPEP 803.04 permits the rejoinder of any claim to a combination containing an allowable sequence, and any composition of matter claim that is limited to allowable sequences.

Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

CONCLUSION

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,

INCYTE CORPORATION

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